

VZCZCXRO8271  
OO RUEHCN RUEHGH  
DE RUEHIN #1690/01 3391016  
ZNY CCCCC ZZH  
O 041016Z DEC 08  
FM AIT TAIPEI  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 0504  
INFO RUEHBJ/AMEMBASSY BEIJING 8779  
RUEHUL/AMEMBASSY SEOUL 9936  
RUEHKO/AMEMBASSY TOKYO 0411  
RUEHCN/AMCONSUL CHENGDU 2921  
RUEHGZ/AMCONSUL GUANGZHOU 0034  
RUEHHK/AMCONSUL HONG KONG 0234  
RUEHGH/AMCONSUL SHANGHAI 2342  
RUEHSH/AMCONSUL SHENYANG 6871  
RUEAIIA/CIA WASHDC  
RHEFDIA/DIA WASHINGTON DC  
RHHJJAA/JICPAC HONOLULU HI  
RUEKJCS/SECDEF WASHINGTON DC  
RHHMUNA/USPACOM HONOLULU HI

C O N F I D E N T I A L SECTION 01 OF 04 TAIPEI 001690

SIPDIS

E.O. 12958: DECL: 12/04/2018

TAGS: [PGOV](#) [TW](#)

SUBJECT: CORRUPTION CASES FUEL PARTISAN RIFT; PROCESS  
RAISES EYEBROWS BUT NO CREDIBLE EVIDENCE OF INTERFERENCE

Classified By: AIT Director Stephen M. Young,  
Reasons: 1.4 (b/d)

¶1. (C) Summary: The opposition is questioning the fairness of Taiwan's judicial process following the detentions of former President Chen Shui-bian and some other senior DPP politicians during corruption investigations. They charge the KMT government with manipulating the judicial system and violating the rights of DPP detainees. We have seen no credible evidence that the government or President Ma Ying-jeou is intervening in the judicial process. Nonetheless, the prosecutors' aggressive approach to the cases against Chen and other DPP leaders is generating perceptions in the Green camp that investigations are politicized. The numerous detentions of unindicted persons, the handcuffing of former President Chen, and near daily leaks of information damaging to Chen are generating a presumption of guilt in the public eye even though Chen has not even been indicted at this point. Ambitious prosecutors may sense that the current atmosphere is conducive to winning cases that target "official corruption" and believe they need to pull out all stops in pursuing such cases. End Summary.

¶2. (C) DPP supporters complain prosecutors are selectively pursuing cases against opposition leaders and are treating their DPP targets harshly by detaining them without indictment. In addition, they charge the prosecutors and government with leaking negative information that provides grist for "trial by media," prejudicing the public and pressuring the judiciary before cases reach court. DPP supporters claim such problems reflect a pro-KMT bias in the judicial system and an effort by the KMT government to undermine the DPP.

¶3. (C) In response, KMT supporters attribute the relatively large number of DPP corruption cases to the party's having been in power the past eight years. They insist there is no political manipulation of the prosecutors or courts, pointing out that investigations of Chen Shui-bian, his family and other DPP officials began when Chen was still in office. They maintain the KMT would not be so "dumb" as to try to intervene in the judicial process, because such an effort would inevitably stir up the opposition and backfire.

¶4. (C) Some KMT observers maintain that the DPP focus on human rights, especially in the case of Chen Shui-bian, is an effort to divert attention from corruption and change the topic to politics in order to retain DPP base support. A law

professor suggested to AIT that the investigation and detention of high-level former government officials, especially Chen Shui-bian, would inevitably be politicized in a divided society like Taiwan. In his view, the DPP strategy of turning the conversation from corruption to human rights was smart politics, since who could argue against human rights? He noted, however, that the human rights concerns being raised by the DPP are long-term issues that did not originate with the recent detentions of Chen Shui-bian and other DPP politicians.

#### Background: Fighting Corruption

-----

15. (C) Fighting corruption has been a hotly contested issue in Taiwan politics for many years. The DPP came to power in 2000 on an anti-corruption platform but effectively lost the issue when President Chen Shui-bian and his wife Wu Shu-jen were themselves implicated in a corruption case. The DPP tried to turn the tables by accusing the KMT's Ma Ying-jeou of misusing his special mayoral allowance, but this effort backfired when Ma, following indictment, was acquitted by three different courts in Taiwan's three-stage trial process. Then, just as Chen Shui-bian had done in 2000, Ma Ying-jeou rode into the Presidential Office in March 2008 with a strong mandate to clean out corruption.

16. (SBU) The Supreme Prosecutor's Office (SPO) in 2007 established a Special Investigation Division (SID) charged with investigating "corruption and offenses of malfeasance in which the President, Vice President, presidents of the five

TAIPEI 00001690 002 OF 004

Yuans, ministers of ministries and commissions or military officials ranking general and above are involved." Since its establishment, the SID has completed investigations and brought indictments against eight senior officials of the DPP administration, including former Vice President Annette Lu, for alleged misuse of special allowances allocated to senior officials. Although the DPP has called for similar investigations of the KMT, investigations of activities by KMT former senior officials that took place before May 2000 have so far produced no results.

Chen Shui-bian

-----

17. (C) Following Chen Shui-bian loss of presidential immunity in May 2008, SID's investigations have focused increasingly on corruption cases involving the former president and his family. Building on previous work by other prosecutors, SID is aggressively pursuing a very broad and complex investigation. Over the past three months, the SID has detained eleven people for investigatory purposes, holding some for almost two months. While seven of the eleven detainees have been released so far, former President Chen, who was detained on November 12, remains in detention with access only to his attorney. DPP Chairperson Tsai Ing-wen (herself a lawyer) acknowledged to the Director recently that Chen's detention and the conditions of his detention are consistent with standard practice by Taiwan's prosecutors but, she added, Taiwan needs to reform the system.

#### Detentions During Investigations

-----

18. (C) According to Taiwan law, a prosecutor can request a judge's approval to detain an "accused person (beigao)" who is strongly suspected of committing a crime for which the penalty exceeds five years imprisonment or where there is fear of flight or fear of witness or evidence tampering. Judges approve detentions for a period of two months, which can be extended. Detainees are held in spartan facilities and, in many cases, including that of former President Chen, they are allowed outside contact only with their attorneys

while in detention. Typically, principal accused persons will be released, generally on bail and with restrictions on residence and travel, after they have been indicted.

¶9. (C) The opposition charges that investigatory detentions constitute "punishment before judgment" and are used to compel testimony (to gain release from detention). The reason prosecutors detain accused persons is to prevent them from comparing notes with other defendants and witnesses as they build their case through questioning and collection of evidence. It is generally accepted that such detentions should be used only in exceptional circumstances. Over the past couple of years, prosecutors have used detentions mainly in investigations of major financial crimes, including insider trading and embezzlement. Although pre-indictment detentions are legal, concerns are widespread that prosecutors are prone to abuse this power. Even some KMT legislators suggest the detention system should be reformed, for example, by reducing the maximum length of time detainees can be held. The highly publicized handcuffing of Chen Shui-bian, which DPP supporters argue was intended to humiliate the former president and the party, has raised questions about how a former president should be treated and about whether there is a need to handcuff non-violent detainees who have not been indicted.

Judicial Bias?

¶10. (C) Some DPP supporters argue that the KMT, now back in power, is using the government and judicial system to conduct a vendetta against the DPP. In addition to the ongoing investigations of Chen Shui-bian and his family and associates, they also cite recent cases against DPP Yunlin County Magistrate Su Chih-fen and DPP Chiayi County Magistrate Chen Ming-wen. Protest hunger strikes by

TAIPEI 00001690 003 OF 004

President Chen and the two magistrates have made their plight more dramatic and emotional for DPP supporters. (Note: While prosecutors requested that Chen Shui-bian and Chen Ming-wen be detained, Su Chih-fen's detention resulted from her protest-refusal to post bail. It should also be pointed out that investigations of the former president's family and of the two magistrates began well before Ma's election.)

¶11. (C) The Chen Shui-bian case is unprecedented in terms of its high political and financial stakes, the complexity and large number of people involved, and the incessant attention by the pro-Blue media. Heavy negative publicity is reinforcing partisan divisions, leading the DPP, on the defensive, to sharpen its criticisms of the KMT and judicial system. The partisan divisions are reflected in public opinion polling. While a majority of the general public view the investigations of Chen Shui-bian and other DPP officials as judicial cases, within the pan-Green camp, most people view these cases as political rather than judicial.

Some KMT Politicians Also Targets

¶12. (C) Over the past couple of years, high-profile prosecutions of KMT corruption cases have not been unusual. KMT Keelung Mayor Hsu Tsai-li, who died last year of illness, had been convicted of corruption in 2006. Hsinchu County Magistrate Chen Yung-chin (KMT) was indicted for corruption in 2006 but acquitted for lack of evidence late last year. Ma Ying-jeou himself was indicted on corruption charges in 2007 but acquitted in a series of three trials that concluded this year. At the time of his indictment, Ma, who said he respected the judicial system, promised to transform a society in which "justice and fairness have been hijacked by politics." Since October, KMT Taichung County Council Speaker Chang Hung-nien has been arrested and released on bail in a corruption case, and KMT legislative caucus secretary general Chang Sho-wen has seen the district court

invalidate his election in a vote buying case, though he will remain in office pending appeal.

#### "Leaks" and the Media

-----

¶13. (C) Conventional wisdom here holds that prosecutors regularly leak information to bolster their cases or boost their popularity and career. However, a well-respected KMT legislator from central Taiwan told AIT recently that the "leaked" information he had been given on the Chen Shui-bian case did not come from the prosecutors but from the attorneys of defendants and witnesses. In addition to prosecutors and attorneys, government officials are also alleged to leak internal documents to KMT legislators or others. Recently, for example, a KMT legislator released copies of Swiss documents provided to the government that concerned a money laundering investigation of the Chen family's overseas accounts. Political commentators, including certain KMT legislators, are combining speculation and "leaks" to provide a highly partisan and often inaccurate running commentary on the Chen Shui-bian story on nightly pro-Blue talkshows. In response to DPP criticisms about "leaks," the Justice Minister recently requested the Supreme Prosecutor's Office and the Ethics Office to undertake an investigation into the allegations.

#### Comment

-----

¶14. (C) Despite DPP criticisms of KMT manipulation and judicial bias, we have seen no credible evidence of direct interference by the KMT, the administration, or President Ma Ying-jeou in the legal cases under way involving former President Chen or other DPP leaders. Because such interference would be very damaging politically if it became public (a near certainty in Taiwan's media fishbowl), it seems extremely unlikely that Ma, a stickler for following all rules, would even consider intervention. The aggressive tactics used by ambitious prosecutors, especially detentions of potential defendants and witnesses, are criticized by many

TAIPEI 00001690 004 OF 004

here. The practice is legal, but recent events have triggered an open debate on whether the system needs reform. While extensive and prejudicial media "leaks" are a serious problem, such leaks are standard, not a new phenomenon, and they have also hurt KMT politicians. Despite flaws during the investigation process, Taiwan's higher level courts are generally well respected, and the three-stage trial process ensures that defendants have multiple opportunities to assert their rights and to rebut prosecutors' charges.

¶15. (C) Current controversies stem, in part, from increasing demands by the Taiwan people that their elected leaders and officials be held accountable. Privately, even many within the KMT admit that a major reason for Chen Shui-bian's election in 2000 and reelection in 2004 was the widespread perception - often accurate - that the "old" KMT was deeply corrupt. Today, even if the passage of time would make such investigations difficult, the perception that senior KMT officials who served before 2000 will escape prosecution - unlike DPP officials who served more recently - complicates the government's efforts to prove that the judicial system is unbiased.

SYOUNG